Supreme Court, U.S.
FILED

No. 09-924 FEB 1 - 2010

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In The

Supreme Court of the United States

YUN KYU YOOK, SUN JU YOOK AND
JU HYUNG YOOK,

Petitioners,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

YUN KYU YOOK
SUN JU YOOK
JU HYUNG YOOK
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Petitioners Pro Se

February 1, 2010

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QUESTIONS PRESENTED

Petitioners, Yun Kyu Yook, Sun Ju Yook and Ju Hyung Yook ask that this Court issue a writ of certiorari to make the following determinations:

1. To determine if the Ninth Circuit Court of Appeals has the authority to make a determination on a defense of equitable estoppel where: a) such a defense was not provided the opportunity to be fully litigated in the lower courts; and b) where Petitioners were not given the opportunity to present a complete record for this defense; and

2. To resolve the inconsistent treatment of a defense of equitable estoppels by the United States Court of Appeals in cases involving the United States Government.

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CITATION TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit, *Yook v. Holder*, Docket No. 06-72321, is attached to this petition as Appendix A at 1a. The agency opinion issued by the Board of Immigration Appeals, In re: Yun Kyu Yook, Sun Ju Yook and Ju Hyung Yook, File Nos. A72-983-857, A72-983-858 and A72-983-860 (BIA April 7, 2006), is attached hereto as Appendix B at 4a.

STATEMENT OF JURISDICTION

The Court of Appeals for the Ninth Circuit entered its judgment denying the timely submitted petition for review on July 31, 2009. The mandate was subsequently issued by the Ninth Circuit on December 3, 2009. The order denying review of the agency appeal is attached hereto as Appendix A at 1a. This Honorable Court's jurisdiction is hereby invoked pursuant to 28 U.S.C. §1254, as the decision below served to deprive Ms. Yook and her children of their rights as granted under the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Central to the matter are the Fifth Amendment rights granted to aliens seeking relief from the Courts of the United States, which Amendment states, in pertinent part, that "No person . . . shall be deprived of life, liberty, or property, without due process of law."

I. STATEMENT OF THE CASE

Ms. Yook and her children were Korean immigrants who entered the United States in 1993. Their Notices to Appear were dated May, 2003 and all were charged with removal pursuant to INA §§237(a)(1)(A) and 212(a)(7)(A)(i)(I). (R:317-319, 558-560 and 746-748). These cases were consolidated on May 11, 2004. (R:243). On June 15, 2005 the Immigration Judge ordered removal of Petitioners. *See* Appendix C at 8a. On June 17, 2005, Petitioners, through their counsel, moved the Board of Immigration Appeals ("BIA") to reconsider the Immigration Judge's decision removing Petitioners. The motion to reconsider was made on the grounds that the government should have been estopped from charging respondents with removability pursuant to INA §§237(a)(7)(A)(i)(I) and 237(a)(1)(A) based on government's unclean hands for its involvement in fraud. On April 7, 2006 the BIA issued an order affirming the Immigration Judge's decision in this matter. *See* Appendix B at 4a.

II. SUMMARY OF ARGUMENT

Ms. Yook and her children hereby assert that the Immigration Judge, in contravention with precedent of the Supreme Court of the United States, determined that no authority existed to make a determination on a defense of estoppel. This erroneous finding by the Immigration Judge resulted in a defective record that failed to contain the necessary evidence and facts to support the Yook's estoppel defense. This record failed to provide both the Board of Immigration of Appeals and the Court of Appeals for the Ninth Circuit with a record for proper review of the defense of estoppel.

Ms. Yook and her children further assert that the Court of Appeals for the Ninth Circuit not only based its analysis of a defense of estoppel on a deficient record, but also applied an analysis inconsistent with the authority set out by the Supreme Court of the United States. The practical result of this decision will be to eliminate the ability to apply a defense of estoppel against the United States Government in an immigration matter.

III. ARGUMENT IN SUPPORT OF PETITION

A. ESTOPPEL DUE TO VIOLATIONS OF DUE PROCESS.

The court found in the *Matter of Thornburgh*, 869 F.2d 1503, 1512 (D.C. Cir. 1989) that the government may be estopped from deportation for violations of due process protections of applicants. The failure to comply with the due process rights of Appellants for deportation should result in the estoppel of claims of deportation. Implications of wrongdoing through violations of due process cannot lead to deportation. The DHS should be estopped from deporting Appellants based on the violations of due process suffered by Petitioners.

B. THE DHS SHOULD BE ESTOPPED FROM REMOVAL OF PETITIONERS.

Estoppel is appropriate only where the government committed affirmative misconduct and not merely false processing functions. *Santamaria-Ames v. INS*, 104 F.3d 1127 (9th Cir. 1996); *Cadwalder v. Andrus*, 45 F.3d 297 (9th Cir. 1995). Petitioners have been entangled within the bribery and fraud convictions of

a former INS agent. This entanglement resulted in the prosecution by the DHS of removal of Petitioners. The criminal misconduct by the agent of the Government resulted in Petitioners prosecution for removal.

Claims of estoppel against the government apply only when the government wrongful acts will cause serious injustice and the public's interest will not suffer undue damage by imposition of the liability. *Morgan v. Heckler,* 779 F.2d 544 (9th Cir. 1985), *Mukherjee v. INS*, 793 F.2d 1006 (9th Cir. 1986). Enforcement of deportation of Petitioners will result in serious injustice to Petitioners who have created successful lives in the United States based on their reliance of the issued immigration status. Similarly, the public's interest is served by allowing Petitioners to remain in the United States and not sever their relationships with this country that include business, education and societal ties. Estoppel is appropriate to prevent severe injustice to Petitioners. *U.S. v. Omdahl*, 104 F.3d 1143 (9th Cir. 1997); *Jaa v. INS*, 779 F.2d 569 (9th Cir. 1986). Petitioners will suffer severe injustice if they are forced to move to South Korea after spending more than fifteen years in the United States building a new and permanent life.

No evidence has been presented that shows that Petitioners were aware of the bribery and fraud committed by Sustaire. Estoppel of actions by the Government is appropriate where Petitioners were ignorant of the true criminal actions committed by the Government but relied on those actions as true. *S&M Inv. Co. v. Tahoe Regional Planning Agency*, 911 F.2d 324 (9th Cir. 1990). Petitioners relied on the issuance of the immigration papers and lived a productive life

in the United States at the cost of terminating their life in South Korea prompted by the issuance of their immigration papers in the United States. The Government should be estopped from shattering these stable lives and forcing Petitioners to leave this country and begin new lives in another country where they don't have long term ties.

CONCLUSION

For the reasons set forth above, Petitioners request that this Court assume jurisdiction over this case, and find that Petitioners' appeal should be granted and that the decision of the BIA and the Immigration Judge be overturned and deportation actions be terminated based on a defense claim of estoppel.

Respectfully submitted,

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IN PRO SE

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 06-72321
Agency Nos. A072-983-857
A072-983-858
A072-983-859
A072-983-860

[Filed July 31, 2009]

YUN KYU YOOK; SUN JU YOOK; JU SUN YOOK; JU HYUNG YOOK,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Yun Kyu Yook and her three children, natives and citizens of South Korea, petition for review of the Board of Immigration Appeals' orders dismissing their appeals from an immigration judge's order of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

We reject petitioners' contention that the government failed to establish removability by clear and convincing evidence, because petitioners conceded removability. *See Shin v. Mukasey*, 547 F.3d 1019, 1024 (9th Cir. 2008).

We also reject petitioners' contention that the government should be equitably estopped from ordering their removal. Although a government employee, Leland Sustaire, issued petitioners' fraudulent alien registration cards, the record shows Yun Kyu Yook was not "ignorant of the true facts" when she procured the cards, *see id.* at 1025, and "[i]n any event, estoppel against the government is unavailable where petitioners have not lost any rights to which they were entitled." *Sulit v. Schiltgen*, 213 F.3d 449, 454 (9th Cir. 2000).

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Finally, we find no defects amounting to a due process violation. *See Shin*, 547 F.3d at 1024-25; *Hong v. Mukasey*, 518 F.3d 1030, 1035-36 (9th Cir. 2008).

PETITION FOR REVIEW DENIED.

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A72-983-857 - San Francisco

Date: APR 07 2006

In re: YOOK, YUN KYU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alex C. Park, Esquire

ON BEHALF OF DHS: Michelle M. Guardino, Assistant Chief Counsel

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated June 15, 2005. This case stems from the illegal actions of a Department of Homeland Security ("DHS") employee, who engaged in a criminal conspiracy to provide lawful status to aliens (I.J. at 2-3; Exh. 4). The respondents in

this matter all conceded the charged ground of removability (Tr. at 14). The DHS withdrew any ground of removability involving affirmative fraud on the part of the respondents (Tr. at 13-15). The primary thrust of the respondents' appeals is a request for equitable estoppel against the DHS, wherein they charge that since the DHS employee conferred status upon them, they should be entitled to retain that status, as a cure to their facial removability. We reject this argument, and first note that the Ninth Circuit Court of Appeals has agreed with this Board's conclusion that we have no jurisdiction over claims of equitable estoppel. See Chang v. United States, 327 F.3d 911, 924 (9th Cir. 2003) (citing Matter of Hernandez-Puente, 20 I&N Dec. 335, 338-39 (BIA 1991)). We further note the Ninth Circuit's holding that "estoppel cannot be invoked against the government because of the unauthorized acts of its agents." Saulque v. United States, 663 F.3d 968, 976 (9th Cir. 1981) (internal citation omitted). Therefore, even were we empowered to adjudicate claims of equitable estoppel, no valid claim would lie here, where the DHS employee committed criminal acts, and thus behaved well beyond his valid authority. The respondents have not offered any other argument warranting a reversal of the Immigration Judge's order of removal. Accordingly, the appeal is dismissed.

/s/

FOR THE BOARD

APPENDIX C

IMMIGRATION COURT
550 KEARNY ST., SUITE 800
SAN FRANCISCO, CA 94106

In the Matter of: Case: A72 983 857
Respondent IN REMOVAL PROCEEDINGS

Yun Kyu Yook

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 6/15/05. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The respondent was ordered removed from the United States to South Korea.

* * *

Appeal waived Reserved: (A) / I / B
Appeal due by: 7/15/05

/s/
Anthony S. Murry
Immigration Judge

Date: 6/15/05

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [✓]

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] ALIEN'S ATTY/REP [✓] INS-GHC

DATE: 6/15/05 BY: COURT STAFF ASM

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ]

0009f/ASM/825/NC

IMMIGRATION COURT
San Francisco, California

File A 72 983 857
A 72 983 858
A 72 983 859
A 72 983 860

June 15, 2005

In the Matter of

YUN KYU YOOK,)
SUN JU YOOK,)
JU SUN YOOK,
JU HUNG YOOK,
Respondent)

IN REMOVAL PROCEEDINGS

CHARGE: Section 327(a)(1)(A) of the Immigration and Nationality Act, alien not in possession of valid documents.

APPLICATION: None.

ON BEHALF OF RESPONDENT:

Alex Park, Esquire

ON BEHALF OF GOVERNMENT:

Grace H. Cheung
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The lead respondent in this case Yun Kyu Yook, is before the Court with her three children in companion cases. All the respondents concede as charged in Notices to Appear that they are native and citizens of Korea who are present in the United States but not in possession of valid immigration documents entitling them to remain in the United States.

These four respondents are individuals who directly or indirectly acquired I-551 resident alien cards as a result of a criminal conspiracy entered into by a former employee of the INS named Leland Dwayne Sistere. Ms. Yook, the lead respondent obtained her green card as a result of the conspiracy and her children's green cards were issued as derivative beneficiaries. The parties submitted this case on the documentary record because the parties having litigated a number of these cases and the Court having presided over a great many of them are all familiar with the facts and some events of late 1980's until the 1990's.

INS employee Leland Sistare engaged in a criminal conspiracy with four individuals who are members of the Korean American community in Northern California. All of these individuals have either pled guilty or have been prosecuted for this criminal conspiracy. In substance, Mr. Sistare's coconspirators approached individuals in the Korean American community and represented to these individuals that they could obtain green cards for these individuals because they worked with immigration lawyers or consultants who had contacts with the immigration service. Mr. Sistare's coconspirators accepted fees which were represented to be attorney's fees, or

processing fees in exchange for obtaining green cards and requested certain limited documentation from people, such as the respondents.

In reality, Mr. Sistare's coconspirators did not obtain, and never submitted to Mr. Sistare all the documentation required to legally and properly issue a green card, nor did individuals such as the respondent ever have to submit to interviews and background checks as required by applicable statutes and regulations. Instead, pursuant to the criminal conspiracy Mr. Sistare's coconspirators would present him with the names of individuals who had paid fees in order to obtain green cards. Mr. Sistare would then, because he was authorized to do so legally, would call the INS service center to issue a green card in exchange for a portion of the so called legal fees or application fees paid by the respondent and other's similarly situated.

Mr. Sistare pled guilty after admitting to INS that he had engaged in this fraudulent scheme. He provided INS with a list of the A numbers that were generated by his fraudulent scheme and the A numbers of the respondents appear on that list. Mr. Sistare testified in Federal Court against his coconspirators after pleading guilty in Federal Court and all his coconspirators have been convicted. Mr. Sistare also testified before this Court and was subject to cross examination and the Court found his testimony to be coherent, detailed, plausible, and credible.

At this juncture the parties do not contest that the green cards which they hold are green cards that were lawfully issued in the sense that proper documentation

and other regulatory requirements were met. In substance, they concede that their green cards were improperly issued as a result of Mr. Sistare's fraudulent scheme. They have asserted however, that the Government should be estopped from removal proceedings because when Mr. Sistare issued the fraudulent green cards he was an employee of the US Government and the US Government therefore has unclean hands in the removal proceedings.

As a preliminary matter the Court notes that the respondents have not cited any authority and the Court is not aware of any authority that gives it the jurisdiction and the power to estop the Government from conducting these removal proceedings. The only issue before this Court is whether respondents have valid documents authorizing them to remain in the United States at this time. And, the respondents have conceded they do not, and the Court finds that they do not, and has sustained the charges of removability with respect to all respondents.

ORDER

Because this Court lacks jurisdiction to estop the Government and the respondents have not sought voluntary departure, based on this record and the documentary evidence in the record on which the parties have submitted the case the Court as noted above sustains the charges of removability and orders all1 four of the respondents removed to South Korea. Appeal has been reserved for all respondents so that they may, among other things, pursue any claims for relief based on a theory of estoppel

/s/ _____
ANTHONY S. MURRY
Immigration Judge

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SEP 23 2005
Executive Office for Immigration Review
Immigration Court
San Francisco, California

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 06-72321
Agency Nos. A072-983-857
A072-983-858
A072-983-859
A072-983-860

[Filed November 25, 2009]

YUN KYU YOOK; SUN JU YOOK; JU SUN YOOK; JU HYUNG YOOK,	)
Petitioners,	)
v.	)
ERIC H. HOLDER Jr., Attorney General,	)
Respondent.	)

ORDER

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Petitioners' petition for panel rehearing is denied.